

## **Exhibit 2**



**VIA EMAIL**

October 12, 2022

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Re: *Netlist, Inc. v. Samsung Electronics Co., Ltd., et al.*, 2:21-cv-00463-JRG (E.D. Tex.)

Dear Mr. Werner:

In *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 876 F.3d 1350 (Fed. Cir. 2017), the Federal Circuit held “an alleged infringer who challenges the patentee’s compliance with § 287 bears an initial burden of production to articulate the products it believes are unmarked ‘patented articles’ subject to § 287” by putting the patentee “on notice” that licensees sold specific unmarked products which the alleged infringer believes to be subject to the marking requirement. Pursuant to *Arctic Cat*, and as you note in response to Interrogatory No. 8 requiring identification of unmarked products, defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, “Samsung”) hereby provide notice to plaintiff Netlist, Inc. (“Netlist”) of products Samsung believes should be marked with one or more of U.S. Patent Nos. 10,860,506 (“the ‘506 patent”), 10,949,339 (“the ‘339 patent”), 11,016,918 (“the ‘918 patent”), 11,232,054 (“the ‘054 patent”), 8,787,060 (“the ‘060 patent”), and/or 9,318,160 (“the ‘160 patent”) (collectively “asserted patents”), but are not so marked by one or more licensees of those patents. See 2022-07-14 Netlist’s Responses and Objections to Defendants’ First Set of Interrogatories (Nos. 1-15) at 17.

Netlist identifies the following instrumentalities to infringe the asserted patents: “DDR4 LRDIMMs, DDR5 LRDIMMs, DDR5 RDIMMs, DDR5 SODIMMs, DDR5 UDIMMs, HBM2 and HBM2E products, and other products that have materially the same structures and designs in relevant parts (the ‘Accused Instrumentalities’).” Dkt. No. 23 (Amended Complaint) at ¶¶ 54-64, 65-135; see also, 2022-05-04 Netlist’s Disclosure of Asserted Claims and Infringement Contentions at 3-4 (accusing Samsung’s DDR4 LRDIMMs, DDR5 LRDIMM, RDIMMs, SODIMMs, UDIMMs, HBM2, and HBM2E).

Netlist itself sells unmarked DDR4 LRDIMMs. See, e.g., <https://netlist.com/products/memory-module/ddr4-dimms/>. [REDACTED]



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[REDACTED]

Given Netlist's allegations, unmarked SK hynix products include, but are not limited to, Hynix DDR4 LRDIMMs, DDR5 RDIMMs, and HBM, including, but not limited to HMABAGL7ABR4N-WMT4, HMAA8GL7CPR4N-VKTN, HMAA8GL7CPR4N-XNTG, HMC94MEBRA112N, HMC988MEBRA107N, and HMC978MEBRA107N, H5UG7HME03X020R, H5UG7HMD83X020R, H5WRAGESM8W-N8L, and H5WR64ESM4W-N8L. See, e.g., <https://product.skhynix.com/products/dram/hbm.go>. Moreover, Samsung asserts that Netlist is aware of specific SK hynix DDR4 LRDIMMs, DDR5 RDIMMs, and HBM products through the Netlist-SK hynix litigation and through negotiations leading to the license.

The above list constitutes notice under *Artic Cat* that at least the named entities sold specific, unmarked products under license to the '506 and '339 patents. Netlist must now prove that the products are marked, or that the identified products are not subject to a marking requirement. Of course, Samsung does not represent that this list is exhaustive as to all unmarked products and licensees of these patents, in particular, because Netlist has failed to articulate any of its own products that embody the patents during discovery. By identifying such products, Samsung does not admit that such products infringe any valid claim of the '506, '339, '918, '054, '060, and '160 patents.

We look forward to your prompt response.

Sincerely,

/s/ Katherine H. Reardon

Katherine H. Reardon

cc: All counsel of record

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<sup>1</sup> Samsung does not concede that any of the asserted patents in this case, including the '506, '339, '918, '054, '060, and '160 patents are valid or enforceable.